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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

4 v.

22 Cr. 352 (JSR)

5 JATIEK SMITH,

a/k/a "Tiek,"

6 SEQUAN JACKSON,

a/k/a "Supa,"

7 ANTHONY MCGEE,

a/k/a "Touch,"

8 KAHEEN SMALL,

a/k/a "Biz,"

9 DAMON DORE,

a/k/a "Demo,"

10 HASIM SMITH,

a/k/a "Hoodie,"

11 RAHMIK LACEWELL,

a/k/a "Ready,"

12 MANUEL PEREIRA,

a/k/a "Manny," and

13 OCTAVIO PERALTA,

14 Defendants.

Conference

15 -----x

16 New York, N.Y.

17 July 5, 2022

3:15 p.m.

18 Before:

20 HON. JED S. RAKOFF,

21 District Judge

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APPEARANCES

DAMIAN WILLIAMS

United States Attorney for the
Southern District of New York

BY: ADAM S. HOBSON

RUSHMI BHASKARAN

Assistant United States Attorneys

ANTHONY CECUTTI

Attorney for Defendant Jackson

BY: LISA SCOLARI

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DAVID K. BERTAN

Attorney for Defendant H. Smith

STEPHEN TURANO

Attorney for Defendant Lacewell

THOMAS AMBROSIO

Attorney for Defendant Pereira

GARY A. FARRELL

Attorney for Defendant Peralta

Also Present:

Shannon Finneran, U.S. Pretrial Services

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1 (Case called)

2 MR. HOBSON: Good afternoon, your Honor. Adam Hobson
3 and Rushmi Bhaskaran for the government. We're also joined at
4 counsel table by Shannon Finneran from pretrial services
5 office.

6 THE COURT: Good afternoon.

7 MS. SCOLARI: Good afternoon, your Honor. Lisa
8 Scolari. With the Court's permission, I'm standing in for
9 Anthony Cecutti, who is on trial out of the district. He
10 represents Sequan Jackson, who has consented to me appearing
11 for him.

12 I also represent my client, Mr. Small. He's aware
13 that I'm covering. He also consents to my doing so.

14 THE COURT: Thank you.

15 MS. BARRETT: Good afternoon, your Honor. Jean
16 Barrett on behalf of Anthony McGee.

17 MR. AMBROSIO: Good afternoon, your Honor. Thomas
18 Ambrosio on behalf of Manuel Pereira.

19 THE COURT: Good afternoon.

20 MR. BRADLEY: Good afternoon, your Honor. Michael
21 Bradley, representing Damon Dore, who is seated here.

22 THE COURT: Good afternoon.

23 MR. TURANO: Good afternoon, your Honor. Stephen
24 Turano on behalf of Rahmiek Lacewell, who is present in the
25 jury box.

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1 THE COURT: Good afternoon.

2 MR. BERTAN: Good afternoon, your Honor. David
3 Bertan, on behalf of Hasim Smith, who is seated second from the
4 end in the jury box.

5 THE COURT: Good afternoon.

6 MR. BERTAN: From the left.

7 THE COURT: From the left. OK. Thank you.

8 MR. FARRELL: Good afternoon, your Honor. Gary
9 Farrell. My client, Mr. Peralta, is directly behind me.

10 THE COURT: Good afternoon.

11 All right. As I understand it, all of the defendants
12 have been previously arraigned, so this is, first, a scheduling
13 conference, and then there were also some bail issues that we
14 need to take up.

15 How long does the government want for the completion
16 of discovery?

17 MR. HOBSON: Your Honor, we understand that defense
18 counsel is in the process of arranging for a discovery
19 coordinator in this case, which they believe will be helpful.
20 We agree. The discovery is somewhat voluminous here. It
21 includes a lot of electronic records, multiple months of wire
22 calls, several seized phones that we are still in the process
23 of unlocking, some of which will require a privilege review.
24 So we are asking for one month from the date of the appointment
25 of the discovery coordinator to complete discovery.

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1 THE COURT: No, I don't want it to turn on that. I
2 almost always approve the appointment of the discovery
3 coordinator. There's no reason that that can't be expedited by
4 the defense, and then as soon as they get me the person's name
5 and credentials, I'll undoubtedly approve it.

6 MR. HOBSON: That's fine, your Honor.

7 THE COURT: Why don't we say six weeks for the
8 completion of discovery, and that would be -- let's see; today
9 is the 5th. So that would be August 16.

10 All right. How long do defense counsel want for the
11 making of any motions?

12 MS. SCOLARI: Your Honor, what I would suggest, since
13 we really don't have a handle on the volume of discovery,
14 except that it's extensive --

15 THE COURT: Well, I'm perfectly happy to have the
16 government describe it in as much detail as you wish right now,
17 but we're going to set a date for motions.

18 MS. SCOLARI: I'm not suggesting you won't. I
19 appreciate that. All I'm saying is when we ask for a date,
20 it's going to be far out.

21 THE COURT: All right. Let's hear from the
22 government.

23 What does the discovery specifically consist of?

24 MR. HOBSON: Your Honor, it's going to consist of,
25 it's going to be wire calls. It's going to be the results of

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1 various search warrants. It's going to be the electronic, the
2 results of electronic search warrants on -- I believe each of
3 these defendants have electronic devices that were seized and
4 are in the process of being searched. It's going to also
5 consist of tax returns and financial records.

6 THE COURT: OK.

7 MS. SCOLARI: Your Honor, my understanding is there
8 were wiretaps on at least two phones and there were two months
9 of wires. That alone is going to present a lot of materials
10 for defendants, particularly those who are incarcerated, to
11 review. So I think the earliest we could even contemplate
12 motions would be potentially January.

13 I know you're not going to like that, but let me tell
14 you why. Because right now, every other week they are locking
15 down MDC, which means these men are locked in their cells and
16 can't get out at all. We can't see them. So it's not even
17 like I can go see my client and go through the discovery with
18 him. When they're out, if they're lucky, they're out half a
19 day. Some of these units have two computers. Some have one.
20 If they can get on a computer an hour a day, they're fortunate.
21 It's going to present a real problem for these clients who are
22 incarcerated to review the material and get ready and help
23 their lawyers decide how to proceed.

24 So with that in mind, I'm asking for a ridiculously
25 long date. I understand from your facial expression --

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1 THE COURT: I agree with your adjective, ridiculous,
2 but let's think it through.

3 First of all, with respect to access to your clients,
4 which is, of course, very important, my practice is that if
5 you're not getting adequate access, then you call -- and this
6 is on an individual defendant basis. So the attorney for that
7 defendant, along with government counsel, calls me. I then
8 call the warden and make special arrangements, and although I'm
9 sure the wardens are never happy about it, I've never had one
10 refuse me. So I will undertake to do that in this case if that
11 continues to be a problem.

12 Now, of course, you're not going to be getting the
13 discovery and reviewing it for a while, so the present
14 situation may ease or it may not. But I will make sure to do
15 that so that you get adequate access.

16 I agree with you that my normal practice of asking for
17 motions two weeks after the completion of discovery would be a
18 little tight in this case, but I can't imagine why you need six
19 months, which is what you're asking for.

20 MS. SCOLARI: Judge, in abundance of caution, because
21 as I said, there's constant lockdowns. There are things that
22 we can't control. And from what I'm hearing, this is happening
23 at MDC. We're getting emails every other week. Lawyers cannot
24 visit. The defendants are on lockdown.

25 THE COURT: I understand. That's why I'm offering my

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1 intervention, which, as I say, has always worked in the past,
2 although as they say, past experience is no guarantee of future
3 results.

4 MS. SCOLARI: Right.

5 THE COURT: But nevertheless, if that were to fail,
6 then, of course, I would reconsider the date we're about to
7 set. But let's assume that my poor efforts to reason with the
8 warden are successful so that you get adequate access, then how
9 much time do you need?

10 MS. SCOLARI: Your Honor, it's hard for me to speak
11 for those that are in Westchester County jail. I'm very
12 familiar with the difficulties in MDC. I'm not familiar with
13 the difficulty in Westchester County. I've heard potentially
14 an hour a day to review discovery if there's no untoward,
15 unexpected consequences. So I don't know. There may be
16 somebody that can speak to Westchester County better than I.

17 MR. BERTAN: Westchester County has a problem in that
18 they usually require the discovery to be provided on CDs, not
19 hard drives. And I don't know how that's going to work out on
20 this particular case, because the discovery is voluminous,
21 according to the government.

22 There's also another issue, your Honor. Once we get
23 the discovery, it's not really coming to us. It's coming to a
24 discovery coordinator, who will need time to process and put it
25 in a format that makes it easier for us to review. So that

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1 kind of has to be added in as well.

2 THE COURT: Well, my experience is that it actually
3 decreases the overall time, because what you then get from the
4 discovery coordinator is something that you can make prompt use
5 of and don't have to spin your wheels in the way you would were
6 it not for the excellent efforts of the discovery coordinator.

7 MR. BERTAN: Yes, your Honor. Just reminding the
8 Court that we'll need that extra processing time.

9 THE COURT: I agree that has to be factored in.

10 MR. AMBROSIO: Your Honor, the only other issue that
11 I've experienced at Westchester County jail is, depending on
12 the level of lockdown there, many times legal visits have to be
13 through a glass, and you're in an open area where there's no
14 door and there's essentially no privacy, because the guards are
15 right next to you. So that is a potential there.

16 MR. TURANO: Your Honor, also, one other issue. I
17 don't think we've gotten to the issue of a protective order
18 yet, but there will be a protective order in place, and I think
19 that could slow down the process as well because some of the
20 discovery, although I think the government has indicated that
21 they're going to do their best to keep documents -- produce as
22 much, as many documents as they can and without designating
23 them as attorney's eyes only or -- (indiscernible).

24 THE COURT: Of course, that doesn't rest in the hands
25 ultimately of the government. It rests in the hands of the

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1 Court, and if I am not persuaded that a particular group of
2 documents should be for, say, attorney's eyes only, they're not
3 going to get that protective order even if you sign it. So
4 there is a third party here known as the judge.

5 MR. TURANO: OK. Then, your Honor, that's something
6 that we can obviously, whatever date you set, if we find that
7 there's a large number and we're having problems
8 (indiscernible) time that we'd have to spend with our clients
9 to view it and certainly we'd come back to the Court.

10 MS. SCOLARI: Your Honor, would you consider, as I now
11 have heard the Court's admonition, would you consider a date in
12 November versus January?

13 THE COURT: I would.

14 MS. SCOLARI: Thank you.

15 THE COURT: And in fact, all the many points you're
16 making makes me think that we should pick a date fairly late in
17 November. So let's say Monday, November 21, for the making of
18 any motions. Then we'll hold a further conference on Tuesday,
19 November 22.

20 Linda, what time do we have available?

21 THE DEPUTY CLERK: Any time you like, Judge.

22 THE COURT: 11 a.m.

23 At that time if there are motions that can be made and
24 can be dealt with orally, they will be. If they require
25 written responses, we'll set a time then for the written

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1 response from the government and any reply papers from the
2 defense. And if there's a need for any evidentiary hearing on
3 the basis of the motions, we'll set the date for that at that
4 time as well.

5 Now, it occurs to me that maybe we also ought to set a
6 trial date, because we've got all of you here, and the sooner
7 we set the trial date, the more you can factor it into your own
8 schedules, so that when some other judge naïvely says, Let's go
9 to trial on January 3, you can say: Oh, no. I'm trying a case
10 before Judge Rakoff.

11 But I'm not suggesting January 3 is the date. I'm
12 just giving you the point. It sounds to me that a realistic
13 date would be February.

14 Is that a problem for anyone?

15 MS. SCOLARI: I believe it is, Judge. I have Mr.
16 Cecutti's schedule, and between his trial schedule and mine,
17 the earliest that we could suggest is June.

18 THE COURT: June?

19 MS. SCOLARI: Yes, your Honor.

20 I knew you would make that same face.

21 THE COURT: No, it's not the same face. It's, I hope,
22 a much worse face. You know there's a thing called the Speedy
23 Trial Act. Not only that, there's something called the Sixth
24 Amendment, which says that the defendants and the public are
25 entitled to a speedy trial.

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1 Now, I don't know if you saw an opinion that I had the
2 privilege of authoring that came down from the Second Circuit
3 last week, entitled *United States v. Pikus*, where I reversed a
4 conviction for violation of the Speedy Trial Act. It would be
5 hypocritical for me then to not pay a great deal of attention
6 to the need for a speedy trial.

7 Now, I recognize, of course, that there's going to
8 have to be time for discovery. That's why I've given the
9 government more time than I usually do. I've just given you
10 what I consider to be a huge amount of time to prepare any
11 motions, and of course, in preparing motions, you'll also be,
12 in effect, partly preparing for trial. But I can't imagine --
13 let us say all motions are resolved by, as I think is likely,
14 the middle, worst case, end of December, then what else is
15 there to do other than, of course, accommodate your schedule if
16 you have actual trial requirements? That, of course --

17 Well, let's hear what they are. Let's start with
18 February. Who's got an actual trial date in February?

19 OK. What is your trial?

20 MS. BARRETT: In January, I'm starting an at least
21 ten-week trial in the Southern District of Illinois, on a
22 murder case, multidefendant, and obviously lots of lawyers.
23 The trial is before Judge Dugan.

24 THE COURT: All right.

25 Is there anyone else who's got a February problem?

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1 MS. SCOLARI: Yes. Mr. Cecutti has a January 23 trial
2 that's to last four weeks, so that's well into February.

3 THE COURT: Is there anyone else who's got a February
4 trial?

5 Maybe what we should do is sever and just try everyone
6 else in February and then try your two clients thereafter. The
7 government's going to oppose that in a minute, but --

8 MS. BARRETT: No objection, your Honor.

9 THE COURT: Yes, I would think you'd be delighted.

10 MS. BARRETT: Yes.

11 THE COURT: So what about that?

12 MR. HOBSON: We do oppose, your Honor. Could we
13 inquire about maybe March or April before we have a severance?

14 THE COURT: Yes. That's fair enough.

15 Who's got a problem in March?

16 Oh, three.

17 Who's got a problem in April?

18 Well, this is now your problem as opposed to --

19 MS. SCOLARI: It's a dual problem. Mr. Cecutti and I
20 both have, different cases, but trial obligations in April.

21 THE COURT: You're making the case for severance.

22 Let me hear who's got a problem -- I'm really
23 reluctant to go into May or June, but just for the sake of the
24 record, who's got a problem in May?

25 All right. Well, no one has a problem in May, so at

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1 least one month earlier on that basis. But why shouldn't we
2 try everyone else in February?

3 MR. HOBSON: Your Honor, one thing I'd note about this
4 case that I think is unique from a number of cases we bring, we
5 have a very large number of victims here. We've interviewed
6 over 25 victims in the course of investigating this case, and
7 we have more that we are approaching. I think that this case
8 is going to turn on a lot of victim testimony, and to make
9 victims testimony once is difficult enough. I think to make
10 them testify multiple times is asking a lot of these victims.

11 THE COURT: Why?

12 MR. HOBSON: Because I think it's very --

13 THE COURT: Are they victims of violence, or are they
14 just victims of a scheme?

15 MR. HOBSON: They're victims of violence. A number of
16 these were older individuals, who were physically assaulted,
17 punched. They've been threatened. Their families have been
18 threatened. They are terrified of testifying.

19 THE COURT: Of course, that would be true the first
20 time they testify. And then when they see that the world does
21 not end, they might be less stressed out for a second time.

22 MR. HOBSON: Respectfully, I don't think that's going
23 to be true of the victims here, especially since some of them
24 might be facing their actual assaulters in one trial but not in
25 another trial.

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1 I'd also note that witness tampering is one of the --
2 sorry. Obstruction of justice is one of the racketeering
3 predicates here. This gang has been threatening witnesses and
4 has been trying to intimidate witnesses from cooperating with
5 the federal investigation.

6 THE COURT: All right. I think on balance we will set
7 this down for a May trial for everyone.

8 How long a trial are we talking about?

9 MR. HOBSON: We estimate three weeks, your Honor.

10 THE COURT: All right. Let's put it down for Monday,
11 May 2, at 9 a.m. And I'll put aside three weeks for the trial.

12 Pursuant to Section 3161 of Title 18, I will exclude
13 from calculations under the Speedy Trial Act all time between
14 now and May 2, 2023 -- I was looking at 2022. Let me make sure
15 that was a Monday.

16 THE DEPUTY CLERK: Monday, May 1, 2023.

17 THE COURT: OK. That's even better. We can celebrate
18 May Day together.

19 Pursuant to Section 3161 of Title 18, I will exclude
20 from calculations all time between now and May 1, 2023, finding
21 that such time is necessary for the completion of the
22 voluminous discovery, the evaluation of the discovery, the
23 meeting with the defendants under these difficult
24 circumstances, and the drafting of any motions as well as
25 subsequent trial preparation, and the accommodating of

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1 counsels' various schedules. For those and other reasons, the
2 best interests of justice in excluding such time substantially
3 outweigh the interests of the public and the defendants in a
4 speedy trial, although let me assure you that, in my mind, May
5 1 is now fixed, firm, and definite.

6 Before we get to the individual bail issues of a
7 couple of the defendants, is there anything else anyone needs
8 to take up?

9 MS. SCOLARI: Your Honor, just briefly?

10 I know the Court does not permit filing papers without
11 permission. I will be asking for a bond modification as to my
12 client. He is out, and so with permission, can I file that
13 request on ECF?

14 THE COURT: Yes. Whenever you're ready, I'm ready to
15 hear you.

16 MS. SCOLARI: Very good. Thank you.

17 THE COURT: OK.

18 I think, unless the marshals disagree, that maybe the
19 best idea is now to let all the lawyers and the defendants who
20 don't have bail applications go back, unless they want to stay,
21 but otherwise go back to their respective places. And then we
22 can proceed with the remaining people on the bail applications.

23 MS. BARRETT: Your Honor, on behalf of Anthony McGee,
24 who I didn't identify, he's the first person in the box over
25 there.

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1 Your Honor, would the Court entertain -- I have not
2 filed a further bail application, because I'm working on
3 gathering and putting together a proposal.

4 THE COURT: Well, here's my position on bail, just so
5 everyone knows.

6 MS. BARRETT: OK.

7 THE COURT: I will entertain a bail application and a
8 bail reapplication at any time between now and the trial of
9 this case, because I take very seriously the constitutional
10 right to bail. But of course, I need some notice. For
11 example, one of the reasons I thought we would take up the bail
12 applications that I was informed of today is because the rest
13 of this week I'll be sitting in the Ninth Circuit by
14 designation, and I didn't want to ask you to have to come to
15 Portland, Oregon, to make your bail application. So I do need
16 a little advance warning.

17 But why don't we do this. Let's leave everyone here
18 in the courtroom. Let's do the bail applications right now.
19 We'll get them done, those who are ready. And those who are
20 not ready I can hear next week, when I'm back.

21 MS. BARRETT: Thank you, your Honor.

22 THE COURT: OK. So who has a bail application?

23 MR. BERTAN: On behalf of Mr. Smith, your Honor, I
24 filed earlier today a letter with the Court explaining
25 circumstances which I believe support granting bail.

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1 I have in my hand his passport. His girlfriend
2 brought it today, as I said she would. I've also received a
3 letter from Regal Cinemas in Staten Island, where Mr. Smith has
4 worked previously, and they've offered him a job once he's
5 released.

6 I'm happy to hand that up to the Court, and I've
7 confirmed with counsel on his state court case regarding the
8 plea offer that's outstanding on that charge. I'm happy to
9 turn those up to the Court for review.

10 THE COURT: OK.

11 MR. BERTAN: I apologize to the government. I only
12 have the one copy. They were given to me this afternoon.

13 THE COURT: We'll get them a copy.

14 MR. BERTAN: His girlfriend has also had installed a
15 landline phone to ensure location monitoring in his home.

16 Simply put, your Honor, under the bail statute, in
17 looking at the characteristics and factors that the Court
18 should consider, you have steady employment since at least
19 2009, a lifetime residency on Staten Island, strong family
20 ties. His girlfriend of ten years and his 11-month-old
21 daughter live on Staten Island. He lives with them. There is
22 no history of drug or alcohol abuse. He has made court
23 appearances in the past, and as I've noted, his record, which,
24 at first blush, looks more serious, is really a collection of
25 mostly driving offenses. The one most serious charge,

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1 manslaughter, is a reckless manslaughter, where he was involved
2 in an automobile accident. He pleaded guilty on that count,
3 was sentenced, completed his state sentence, and then was
4 discharged early on parole.

5 THE COURT: What about the government, a few minutes
6 ago, was suggesting -- and I don't know if they're suggesting
7 this with respect to your client or not; we'll hear from them
8 in a minute -- but was suggesting that there was a real danger
9 here of intimidation of witnesses? And if your client was part
10 of that, assuming the government is able to establish that
11 that's more likely than not, then he would be a danger to the
12 community. So what about that?

13 MR. BERTAN: One moment, your Honor. I just want to
14 look something up.

15 The sole allegation against him, according to the
16 government's letter of June 28, is that he may have been
17 present at another assault. There has been no factual
18 allegation thus far that he was involved in any witness
19 intimidation. And what I would note for the Court is taking a
20 step back from my particular bail application, if you look at
21 the industry of, this EMS industry in general, it is an
22 extremely competitive business. The participants, the
23 companies all listen to scanners. They rush to fire scenes,
24 accident scenes, and they compete with each other, sometimes
25 physically, in order to get the business.

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1 The incident in which Mr. Smith was arrested at a fire
2 scene, he's charged with assaulting a police officer, that's
3 the basis for the plea offer of a violation of disorderly
4 conduct. He got into an argument with a police officer, and
5 the police officer took offense and charged him. The Queens
6 District Attorney's Office has offered him a plea to disorderly
7 conduct. That does not rise to the level of assaulting a
8 police officer. So in that regard, I don't believe that he
9 shows a propensity to violence.

10 Also, if he is under home detention with an ankle
11 bracelet, he's not going to be going out anywhere. He's
12 perfectly content posting a bond, staying at home, taking care
13 of his daughter, and helping me prepare for trial.

14 THE COURT: All right. Let me hear from the
15 government.

16 MR. HOBSON: Your Honor, first of all, can I confirm
17 that the Court has had an opportunity to review our June 28
18 bail letter? That should be on the docket. It was submitted
19 to Judge Aaron.

20 THE COURT: The answer is that I don't think I have.
21 I did review Mr. Bertan's letter of earlier today. And I also
22 got the pretrial services report that was sent initially to
23 Judge Aaron, in which the pretrial services officer believes
24 that detention is necessary, both because the defendant poses a
25 risk of nonappearance and because the defendant poses a risk of

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1 danger. And with respect to the latter, that report says,
2 among other things, that the defendant, in addition to the
3 pending charge that we just heard about, has a history
4 involving violence and weapon use, constituting really a
5 pattern, in the pretrial services officer's view, and is an
6 alleged gang member.

7 With respect to nonappearance, the pretrial services
8 officer said there was a risk of nonappearance because of
9 possession of a passport, questionable employment status, and
10 prior arrests and convictions. That was, subject to hearing
11 from you, I thought perhaps not as overwhelming as the issue of
12 danger, but the issue of danger is one that is, of course, very
13 important to the Court.

14 MR. HOBSON: Yes, your Honor.

15 We view this primarily as detention based on danger,
16 although we do think there are some risks of flight in addition
17 to those factors that pretrial set forth that are not
18 insignificant here, and I'll outline those.

19 The reason I asked about our June 28 letter is this is
20 a somewhat unusual gang case, and I wanted to -- our letter set
21 forth some of the details of how this racketeering and
22 extortion scheme operated.

23 THE COURT: Tell me now.

24 MR. HOBSON: So I'll go over it.

25 THE COURT: Yes.

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1 MR. HOBSON: I didn't want to belabor it if the Court
2 had that.

3 THE COURT: Yes.

4 MR. HOBSON: Essentially, this case involves a group
5 of Bloods gang members who brought mob tactics to control
6 what's called the fire emergency mitigation services industry
7 in the Queens and Brooklyn and Staten Island areas.

8 What happens when a property loss, when a property has
9 a fire is a number of actors come on the scene. One of those
10 is referred to as an EMS company, an emergency mitigation
11 services company. First Response was an emergency mitigation
12 company based in Brooklyn. And these companies would go to a
13 scene, jockey with other companies to encourage a property
14 owner to sign their company up and have them manage the cleanup
15 of the property, help with the submission of basic information
16 that's then passed on to insurers.

17 Another member of this industry, which is a little
18 less relevant for Mr. Smith's bail argument but which I'll
19 discuss is what's called a public adjustor.

20 When an insurance loss happens, often a property owner
21 will hire a public adjustor, which is someone who advocates
22 with the insurance company on their behalf, helping with
23 submitting and negotiating the claim.

24 The public adjustors and the EMS companies work hand
25 in hand. They often refer each other, and they often are

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1 involved in the submissions of claims.

2 What happened with First Response is an individual
3 named Jatiek Smith, who is a Blood, and who is Hasim Smith's
4 brother, joined this, what had at the time been a legitimate
5 company, First Response, in 2020 -- he joined in 2019, and over
6 the course of 2020 and 2021, they used violence and threats of
7 violence to take over that company and to take over the EMS
8 industry as a whole and also eventually to take over, to exert
9 control over the public adjustor industry as well.

10 They used violence and threats of violence to enforce
11 a rotation system, in which they would decide who got which
12 job. They would also, they also enforced an extortion system
13 in which EMS companies were required to pay them \$1,000 and
14 then ultimately \$2,000 a week in order to continue operating
15 and to avoid getting violence, to avoid being attacked.

16 There were multiple assaults in this industry, and one
17 thing that's notable is a lot of these assaults were carried
18 out against, for lack of a better word, "civilians." People
19 who were engaged in this legitimate industry, had been engaged
20 in it for years, often were in their 60s, and then were
21 suddenly met with sucker punches and assaults and being thrown
22 to the ground at the scenes of these fires, often in front of
23 homeowners, who were there suffering a fire loss and trying to
24 figure out what to do.

25 It really created a level of chaos that was unheard of

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1 in this industry.

2 There were also lots of threats of violence to
3 members' families, suggesting that the members of First
4 Response knew where people's families were and would attack
5 their families. There was discussion of guns. There was
6 discussion of shootings. I'll note that in our search during
7 the takedowns, we recovered at least three guns in the office
8 building that this crew was using as their headquarters and
9 also guns in some of the defendants' homes.

10 This particular defendant, Hasim Smith, as I said, is
11 the brother of the leader, Jatiek Smith, and Hasim Smith's
12 primary job was to run the night shift. So he was in charge of
13 who got what fires at nights and in enforcing First Response's
14 dominance during the nighttime. As the Court can imagine, a
15 lot of fires happen at night. There's a lot of activity in
16 this industry at night, and we know that a lot of the assaults
17 here happened at night.

18 I know the Court asked about his particular
19 involvement in threats to witnesses. While I don't know of
20 this defendant's particular involvement in making threats, I do
21 know that he was present at some occasions in which Jatiek
22 Smith was threatening members of the industry not to cooperate
23 with law enforcement and with the federal investigation.

24 With respect to this defendant's history, I think it
25 is more troubling than what Mr. Bertan has described and is a

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1 little more along the lines of what pretrial has described.
2 Mr. Bertan omitted a lot of the youthful offender conduct,
3 which involved some weapons charges, I believe, reckless
4 endangerment, resisting arrest. But even of the charges that
5 were not youthful offenders, I think that when the Court looks
6 at sort of the pattern of them, it shows a consistent disregard
7 for the law, and it's very troubling that a lot of these
8 happened while he was on pretrial release for other cases.

9 Just my quick analysis of it is that in June 2013, he
10 was arrested for a burglary and for reckless endangerment, for
11 fleeing from the police. He was convicted for that in late
12 2013 and sentenced in early 2014 for about 90 days. But as
13 soon as he got out, he's arrested again in April of 2014 for
14 reckless endangerment based on reckless driving.

15 In June 2014, he's arrested for selling drugs. A few
16 weeks later, also in June 2014, he's arrested for vehicular
17 assault after leaving the scene of personal injury accident.
18 That is not the crime for which he was convicted of
19 manslaughter. It was while he was on pretrial release for
20 that, that on July 25, 2015, while those prior cases were still
21 pending, this particular manslaughter incident happened.

22 And I believe, my understanding from the police
23 reports is what happened there is he was recklessly driving,
24 trying to get around a car, ran a red light, ran into a pole,
25 and the 19-year-old female passenger in his car died as a

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1 result.

2 He got out from parole for these various offenses in
3 January 2020, and immediately he joined his brother's company
4 at First Response and began his involvement in this enterprise,
5 so committing these crimes while he was on parole, as soon as
6 he got out from jail for those other crimes.

7 In March 2022, so just a few months ago, he was
8 arrested for attacking a police officer at the scene of a fire.
9 I recognize that that was, or I'm told that that's pleading
10 down to a disorderly conduct, but according to the arrest
11 report, he was flailing his arms, attacking a police officer at
12 the scene, and the police officer was hit and injured in the
13 course of that attack.

14 As for his gang membership, NYPD records indicate that
15 he previously identified himself as a member of the Tombstone
16 Gangsta branch of the Bloods. That's the same branch of the
17 Bloods that his brother is in.

18 Finally, I think that all of this, this pattern of
19 lawlessness and the nature of this particular enterprise, makes
20 us very concerned about the risk of violence and the risk to
21 the community should he be released.

22 I don't think the risk of flight plays as strong a
23 role, but I don't think it's insignificant here, partly given
24 his history of resisting arrest, his record of bench warrants,
25 his consistent violation of the terms of his release, the fact

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1 that he has more money in the bank than a lot of defendants
2 have, and the fact that he, with these serious federal charges
3 pending, does have a real incentive to flee. So I don't think
4 that's a risk to be ignored, but I do agree with the Court that
5 danger to the community is a primary risk here.

6 THE COURT: All right.

7 Let me hear from defense counsel.

8 MR. BERTAN: Your Honor, just briefly, it's my
9 understanding there were no weapons found when Mr. Smith was
10 arrested. So that's the first thing.

11 Secondly, he has no violent convictions on his
12 criminal history.

13 THE COURT: Yes, but when we talk about danger to the
14 community, though -- of course, I'm most concerned with the
15 possibility of violence, but we're also talking about the
16 likelihood that he will go out and commit new crimes, and
17 according to the government, he has not only a long history of
18 committing crimes, but he does so either the minute he's
19 released or while he's on supervised release or probation, and
20 that is a pattern that seems to have existed from early in his
21 criminal career, so to speak.

22 Why doesn't that make him a danger to the community?

23 MR. BERTAN: Your Honor, given his most recent arrest
24 and release from jail on the manslaughter charge, he was
25 discharged early on parole, and that, according to Mr. Smith

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1 and Ms. Dixon, was primarily because he was doing well on
2 parole. He was working, and he wasn't getting into any other
3 trouble or any other arrests.

4 The incident in which he was arrested in Queens for
5 assaulting the police officer, police can write whatever they
6 like in their initial arrest report. The bottom line is when
7 the district attorney decides what can be proven and not
8 proven, that case was reduced to disorderly conduct. It seems
9 more likely than not that that charge was drastically elevated
10 by the police to support the arrest. He may have been
11 disorderly.

12 THE COURT: I agree with you that what is most
13 critical is what the district attorney offered by way of a
14 plea, but that can be for a hundred reasons. It can be because
15 they're overloaded with cases. The reasons why plea bargains
16 are made, particularly in the overloaded state system, are not
17 the basis for inferring that the police exaggerated their
18 report, and I decline to make that finding. But I do agree
19 with you that what's ultimately relevant is the fact that the
20 district attorney was apparently prepared to accept a plea of
21 disorderly conduct. So I'll take it at that.

22 MR. BERTAN: Your Honor, with regard to danger to the
23 community, I can only reiterate that Mr. Smith is willing to
24 abide by whatever conditions this Court would set -- home
25 detention with monitoring -- and that would act to protect the

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1 community. He would be at home. Any breach of that condition
2 would have him back here in front of your Honor.

3 THE COURT: Thank you for your excellent arguments.

4 I'm going to detain him. I do agree with defense
5 counsel that there are conditions that would prevent against
6 the likelihood of flight, but what we have here and what
7 animates my decision is a long history -- as well as an
8 involvement in a well-known, vicious gang, but a long history
9 of personal involvement in criminal activity coming even when
10 ordered by the court not to do it, because he was on probation
11 or supervised release or something similar to that. And that
12 suggests strongly that regardless of what conditions were
13 imposed, he would find a way to continue posing a threat to the
14 community. So on that basis, the Court will detain him.

15 Now, there was another bail application.

16 MR. TURANO: Your Honor, I just have an application
17 with respect to Mr. Lacewell.

18 Now, I did appear and made an argument with respect to
19 this in magistrate court.

20 THE COURT: Right. So this is, in effect, an appeal
21 from Judge Aaron.

22 MR. TURANO: It is, your Honor. At the time I
23 mentioned and referenced that I believe --

24 THE COURT: Although I should note for the record that
25 it is *de novo* appeal, and while I have the greatest respect for

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1 Judge Aaron, I have to, on my own, reconsider all the relevant
2 elements.

3 MR. TURANO: And your Honor, that's, quite frankly,
4 why I proceeded before Judge Aaron, because at the time I
5 pledged or I thought that I would have a significant package to
6 offer, and in fact, over the last few days, I do have a
7 significant package.

8 I have spoken to personally -- I think it was
9 approximately 14 people, who, by the way, first time ever I
10 called them and not a single person didn't answer their phone,
11 and not a single person didn't articulate that they were more
12 than willing and able to sign, if permitted by the Court, on
13 behalf of Mr. Lacewell. And that runs the gamut. I have
14 cousins. I have siblings. His mother's in the courtroom. His
15 child's mother's in the courtroom. Mr. Lacewell has a
16 one-year-old, Zion, who is -- his ties to the New York
17 community are significant.

18 I suspect what concerned -- I know what concerned
19 Judge Aaron. I suspect what will concern the Court here is a
20 danger to the community. Now, my client does have a criminal
21 history, no doubt. I'm not going to sit here and say that he
22 does not have a criminal history with multiple serious
23 convictions. I will note that his last conviction -- sorry,
24 not his last conviction, but he was released in 2017.

25 THE COURT: I'm just looking now at the presentence

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1 report that was given to Judge Aaron.

2 At age 18, he pled guilty to second degree rape and
3 was sentenced to one to three years. At age 25, he pled guilty
4 to false impersonation.

5 I'm sorry. I missed one.

6 At age 24, he pled guilty to criminal possession of a
7 controlled substance. At age 25, as mentioned -- also, at age
8 25, he pled guilty to attempted reckless endangerment,
9 involving a gang assault that caused serious physical injury.
10 There was a consolidated charge there, which I don't have the
11 results of in front of me, but of attempted murder.

12 In 2014, he pled guilty to a felony offense involving
13 criminal possession of a controlled substance. And in 2021, he
14 was convicted on a plea to disorderly conduct.

15 Now, those are just the pleas. Many of the charges
16 went well beyond that, but I only look at the pleas. I don't
17 feel I can draw any inference from charges that were not pled
18 to and were not tried. But even just looking at the pleas,
19 that's a pretty continuous pattern of misconduct.

20 MR. TURANO: Judge, as I indicated, it is a
21 significant history, but he is now -- my client is now 37 years
22 of age. As I indicated, his, he was released in 2017, so we
23 have a period of five years where he has been offense free.

24 Now, with respect to this case, your Honor, with
25 respect to these allegations --

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1 THE COURT: I'm sorry. There was --

2 MR. TURANO: Just to continue, your Honor.

3 THE COURT: -- disorderly conduct.

4 MR. TURANO: You're right. Disorderly conduct, your
5 Honor, for which he received, I believe he pled guilty.

6 THE COURT: A conditional discharge.

7 MR. TURANO: Right, right, which, essentially, after a
8 period of time, would have been removed from his record.

9 THE COURT: Yes, and this apparently involved the
10 operation of an unlicensed vehicle, or something to that
11 effect.

12 MR. TURANO: Correct.

13 Now, your Honor, so, again, I know your Honor
14 indicated a pattern. Now, I think what's important, and I
15 agree, most of these charges -- in fact, all of these charges
16 were state charges. I'm not suggesting that Mr. Lacewell be
17 released today, RORed, and come back sometime -- I think the
18 next appearance is November, whenever it is.

19 Your Honor, pretrial services is obviously very good
20 at what they do. This is a federal charge. I'm suggesting
21 that there be some very strict conditions. We have a bunch of
22 people that are prepared to come and sign, essentially, confess
23 their livelihood.

24 THE COURT: Once again, although I'll hear from the
25 government on flight, I am generally of the view that people in

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1 this situation, if they're held in home confinement, with
2 monitoring and all like that, become a low risk of flight. I
3 have had people flee in that situation, but they've been the
4 great exception. It's the danger to the community that I'm
5 concerned with.

6 MR. TURANO: Judge, for the same reason why he's not a
7 flight risk he's not a danger to the community. He is not
8 alleged to be someone who is a kingpin that can operate out of
9 his home and conduct business. In fact, he came to this
10 alleged conspiracy very late. He came to it, was hired by this
11 company in, I believe, December, December 23 of 2020.

12 He was laid off, as the government will indicate, by
13 the nominal owner, who some of his conspirators are alleged to
14 have kind of bullied and forced out of the business. That guy
15 that was bullied laid him off in March of 2021 prior to his
16 arrest. So he was in a truncated position in the conspiracy.
17 There's no allegation that he had any leadership position or
18 any authority. He was essentially one of 50 employees in a
19 very competitive and, from what I understand, before these guys
20 ever were born, a very rough-and-tumble business.

21 My client, but I will go back -- again, we are talking
22 about danger to the community, allegations of being a danger to
23 the community. In the government's June 28 letter to Judge
24 Aaron, where they were outlining what they suspect was, for
25 purposes of detention and bail, they talk about some pretty

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1 sensational and salacious acts of violence. The problem is
2 that my client wasn't even part of the company at this time.

3 So when you flip to pages and get to, finally, page 5
4 of my client's reference, they say he may have been involved or
5 may have been present -- not involved. I'm sorry. He may have
6 been present at, where there was an alleged act of violence.

7 Was it a slap? Was it a push? Was it a shove? I
8 don't know. But the fact of the matter is, your Honor, there's
9 no allegations that he had any positions of leadership, that he
10 had any acts, specifically involved in any acts of violence.
11 The government had an opportunity to present that, and that
12 wasn't in their paperwork.

13 Certainly, your Honor, he was not found in possession
14 of any guns. I don't see -- and we're also kind of faced with,
15 your Honor, I know it's difficult argument, because based on
16 our schedules, we all raised our hand and said we want a
17 November date to turn over motions and we want a May or June,
18 or whatever, trial date. And I understand that, but all the
19 while, Mr. Lacewell is going to sit in jail, you know, in a
20 crowded facility, where there clearly is an inability to defend
21 this case, I believe, effectively or as effectively if he's
22 home.

23 And I think, your Honor, while his criminal history is
24 troubling -- it's troubling to the Court, and no doubt, it's
25 troubling to me, certainly. I understand that. I don't think

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1 we'd be here if he didn't have any criminal history. Clearly,
2 clearly there's a package that I have that I think can
3 satisfy -- assuming I can satisfy the government, assuming I
4 could satisfy pretrial, there is a package in place with the
5 conditions that would not only protect or alleviate any
6 concerns the Court would have about a flight risk but also
7 would alleviate the Court's concerns about him coming out and
8 continuing to commit offenses.

9 THE COURT: All right.

10 Let me hear from the government.

11 MS. BHASKARAN: Thank you, your Honor.

12 The government's primary concern with respect to this
13 defendant is the danger that he presents, and that's based on
14 his conduct in the charged indictment as well as his criminal
15 history, which your Honor's already gone through.

16 So let me start with the defendant's role in this
17 conspiracy.

18 Mr. Hobson's remarks about the nature of the
19 conspiracy and the acts committed by members of the conspiracy
20 is all applicable to this defendant. So I adopt those remarks
21 by reference.

22 But this particular defendant was very involved in
23 this conspiracy, and we know that because he was intercepted on
24 Title III wiretaps that the government did in connection with
25 this investigation. We know that he's been involved in some of

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1 the acts of extortion in this case, and we also know that he
2 was present at at least one of the assaults that we
3 investigated.

4 The government has a letter that describes some of the
5 assaults that we're aware of. We did not describe each and
6 every one of the assaults that we investigated. But one such
7 assault occurred in October of 2021. We believe that the
8 defendant, Mr. Lacewell, was present at that assault because
9 cell-site evidence puts him at the scene of that particular
10 assault at the time that it occurred.

11 During that assault, a victim, who was present at the
12 assault, was punched twice in the face. And again, these
13 assaults are completely unprovoked. This was a worker at a
14 construction site.

15 THE COURT: This is a point your colleague made with
16 respect to the other defendant that also factored into my
17 ruling there, and I want to hear from defense counsel here.

18 MS. BHASKARAN: Yes, your Honor.

19 THE COURT: It's one thing to say that a defendant was
20 not personally involved in assaulting someone, but if, as part
21 of an extortionate gang scheme, he is personally present when
22 one or more assaults occur, the inference is reasonable that he
23 is fully supportive of that tactic being used, which, according
24 to your colleague, was the favored tactic of this particular
25 conspiracy.

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1 MS. BHASKARAN: I agree, your Honor.

2 And if I could also add with respect to this assault,
3 one of the things that the assailants did after assaulting this
4 particular victim was that they took the victim's
5 identification card and took a photograph of it. And the
6 inference there, of course, is that they were intimidating the
7 victim to know where that victim lived.

8 We also have evidence that Mr. Lacewell was present at
9 that same event that my colleague described, where, I believe,
10 defendant Hasim Smith is encouraging victims, witnesses not to
11 assist with law enforcement's investigation. And so we have
12 serious concerns about Mr. Lacewell's involvement in the
13 obstructive conduct that this indictment charged.

14 Mr. Turano makes some remarks about how Mr. Lacewell
15 had a tertiary role in the conspiracy, and that is not what we
16 believe the evidence will show. Mr. Lacewell was actually
17 arrested at the lead defendant's home on the day of the
18 takedown. The lead defendant had flown to Puerto Rico the day
19 before, and Mr. Lacewell was found there. He actually
20 attempted to run away as law enforcement attempted to arrest
21 him, which I think is a factor that the Court should consider
22 when determining whether there are any conditions that would be
23 appropriate for him to be released.

24 So we do think the conduct here that's been charged in
25 this case is very serious. It's very violent.

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1 This defendant, too, is a member of a dangerous street
2 gang, the Bloods. And as your Honor has already noted, he has
3 a very significant criminal history, beginning from when he was
4 18 years old and continuing to this day, with his most recent
5 conviction at the age of 35. And that presents a tremendous
6 concern. And to the extent that there is any thought that a
7 very significant bail package might mitigate the danger that he
8 presents, I think that criminal history answers that question
9 quite clearly.

10 THE COURT: Let me hear from defense counsel.

11 MR. TURANO: Thank you.

12 As far as -- work backwards. Mr. Lacewell denies,
13 certainly in the last however many years, denies having any
14 gang affiliation. Like I said, he's 37 years old. That's an
15 allegation that's easily made, but certainly he would deny that
16 he was, in fact, a Blood gang member.

17 In terms of attempting to run away, now, the Court
18 should consider that, although the Court indicated your Honor's
19 not as concerned about my client being a flight risk, the fact
20 of the matter is he was at this home when a search, I guess, of
21 Mr. Smith was executed for his arrest. He opens the door. He
22 sees law enforcement. There is no altercation. There was no
23 flight. He went without incident. So I don't think that
24 that's something that your Honor can or should be able to
25 really consider when someone is kind of disturbed at whatever,

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1 6:00 in the morning.

2 As far as witness tampering goes, that is something
3 that kind of concerns me, because I have not heard anything
4 about -- certainly Mr. Lacewell has been in jail for the last
5 few days, since his bail application, and I have not heard
6 anything from the government with respect to witness
7 intimidation until it came up at this argument about severance.

8 So I don't believe witness intimidation and my
9 client's role in this intimidation was ever a basis for his
10 detention with Judge Aaron. So I would submit, your Honor, we
11 are going to sit, and maybe, what, April 15 -- depending upon
12 your Honor's practice in terms of *Jencks* material, when we
13 actually get *Jencks* material, I will be sitting and sitting and
14 sitting, looking at discovery, and there's not going to be any
15 evidence of witness tampering or any evidence of actual
16 violence on those wiretaps.

17 THE COURT: Just to interrupt for a second, because
18 it's a side issue, but with respect to *Jencks* Act material, of
19 course, I can't force the government to give it in advance.
20 But my practice in a case like this is to require it to be
21 given a month in advance, not two weeks in advance, the only
22 exception being if there's someone who is subject to potential
23 physical threats that are not just theoretical but have been
24 shown. But barring that, I'm hopeful the government will agree
25 with me -- but we don't need to reach that today -- and you can

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1 get, you and all the defendants can get the Jencks Act material
2 a month before trial.

3 MR. TURANO: And your Honor, believe me, I appreciate
4 the extra two weeks.

5 My point is, though, I think that we can make a lot of
6 allegations about the strength of the case, and sitting here
7 during a bail hearing or standing here during a bail
8 application, I really can't respond to that, and I shouldn't be
9 responding to that. I can tell you what I see in the
10 government's detention papers. When they were arguing to Judge
11 Aaron why he should be detained, and what they simply said is
12 there's nothing about the witness intimidation. There's
13 nothing about guns. There's nothing about acts of violence.
14 All they say after a number of very salacious, horrible
15 assaults, that my client was not a member of the conspiracy,
16 that Mr. Lacewell is an employee and a self-professed Bloods
17 member -- again, I've spoken to that already -- and in addition
18 to being present at at least one assault is involved in the
19 extortion of victims.

20 I understand that he is charged in an indictment. I
21 understand that, and that's what essentially that says, but
22 that's not enough. And your Honor, I do believe, I do believe
23 with the package that I'm able to present, with the strict
24 conditions, including home confinement, electronic
25 monitoring -- all the things that protect and satisfy the

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1 Court's concerns about flight risk -- should be put in place
2 that would, I can satisfy significantly the Court's concerns
3 about him continuing a pattern of criminal conduct, which
4 again, I would submit, your Honor, although it is extensive, we
5 have a man who's now 37 years of age and had served his time on
6 those, pled guilty to all of the offenses for which he was
7 charged and was released in 2017.

8 I think, you know, we can vet through the 14, and by
9 the way, here is all the financial information of, all the pay
10 stubs and all the things that I have of all these people who
11 know Mr. Lacewell well, notwithstanding the charges set, you
12 know, we vouch that he will abide by all these conditions,
13 including, including some strong third-party candidates,
14 custodians who can sit here and say (indiscernible) committing
15 any acts of certainly not extortion or violence, because I
16 don't think the government can even argue that his arms were
17 long enough to do that. He was laid off in March of 2022 by
18 this kind of nominal victim owner.

19 So, your Honor, for those reasons, and I don't want to
20 belabor it, but for those reasons, I believe that a package can
21 be in place that will absolutely alleviate any concerns which
22 the Court would have with respect to the violence.

23 THE COURT: Thank you very much.

24 And I want to thank both counsel for the defense, both
25 in the previous application and this one, for their excellent

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1 arguments.

2 Once again, I am, on the one hand, persuaded that
3 there are a set of conditions that could reasonably assure
4 against flight, but that there are not a set of conditions that
5 would reasonably assure against danger to the community.

6 Yes, it's true that in this, as in every other bail
7 hearing, the Court relies on what the government says it will
8 be able to prove. And of course, that sometimes doesn't come
9 to pass, but here, the government says that it will show that
10 this defendant was present when a vicious attack in furtherance
11 of the overall conspiracy did occur, and that by itself speaks
12 volumes about his state of mind. When it's coupled to the
13 prior history of repeated criminal activity, the Court thinks
14 that the likelihood of danger is very real and that no set of
15 conditions can assure against it. So the defendant will be
16 detained on that basis.

17 I appreciate the fact that there are family members
18 and other supporters here, and I am very grateful that they
19 came. And that was part of the reason I agreed with the
20 defense on the flight risk part, but of course, the danger to
21 the community is a different kind of evaluation.

22 Is there anything else any counsel needs to raise with
23 the Court at this time?

24 All right. That concludes this proceeding.

25 MR. HOBSON: Your Honor, I'm sorry. I have one

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1 procedural question, which is, as we discussed, we're getting a
2 protective order together. Once we have agreement, should we
3 just email that to chambers?

4 THE COURT: Yes, but just keep in mind that this
5 Court's practice is to maximize disclosure and only restrict
6 disclosure, such as for attorney's eyes only, in the most
7 substantial situation. So bear that in mind whenever you're
8 working on it.

9 MR. HOBSON: Yes, your Honor. We are.

10 THE COURT: Very good. Thanks a lot.

11 (Adjourned)
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